

1 alleged insufficient facts under a cognizable legal theory. Balistreri v. Pacifica Police Dep't,
 2 901 F.2d 696, 699 (9th Cir. 1990). In determining whether a complaint states a claim on
 3 which relief may be granted, allegations of material fact are taken as true and construed in
 4 the light most favorable to the plaintiff. Love v. United States, 915 F.2d 1242, 1245 (9th Cir.
 5 1989). However, "the liberal pleading standard . . . applies only to a plaintiff's factual
 6 allegations." Neitzke v. Williams, 490 U.S. 319, 330 n.9 (1989). "[A] liberal interpretation of
 7 a civil rights complaint may not supply essential elements of the claim that were not initially
 8 pled." Bruns v. Nat'l Credit Union Admin., 122 F.3d 1251, 1257 (9th Cir. 1997) (quoting
 9 Ivey v. Bd. of Regents, 673 F.2d 266, 268 (9th Cir. 1982)).

10 Although a complaint "does not need detailed factual allegations" to survive
 11 dismissal, a plaintiff must provide "more than mere labels and conclusions, and a formulaic
 12 recitation of the elements of a cause of action will not do." Bell Atlantic Corp. v. Twombly,
 13 550 U.S. 544, 555 (2007) (rejecting the traditional "no set of facts" standard set forth in
 14 Conley v. Gibson, 355 U.S. 41 (1957)). The complaint must contain factual allegations
 15 sufficient to rise above the "speculative level," Twombly, 550 U.S. at 555, or the merely
 16 possible or conceivable. Id. at 557, 570.

17 Simply put, the complaint must contain "enough facts to state a claim to relief that is
 18 plausible on its face." Id. at 570. A claim has facial plausibility when the complaint presents
 19 enough facts "to draw the reasonable inference that the defendant is liable." Ashcroft v.
 20 Iqbal, ___ U.S. ___, 129 S. Ct. 1937, 1949 (2009). This standard is not a probability
 21 requirement, but "it asks for more than a sheer possibility that a defendant has acted
 22 unlawfully." Id. A complaint that pleads facts that are merely consistent with liability stops
 23 short of the line between possibility and plausibility. Id.

24 In a pro se civil rights case, the complaint must be construed liberally to afford
 25 plaintiff the benefit of any doubt. Karim-Panahi v. Los Angeles Police Dept, 839 F.2d 621,
 26 623 (9th Cir. 1988). Before dismissing a pro se civil rights complaint for failure to state a
 27 claim, the plaintiff should be given a statement of the complaint's deficiencies and an
 28 opportunity to cure. Id. Only if it is absolutely clear that the deficiencies cannot be cured by

1 amendment should the complaint be dismissed without leave to amend. Id. at 623; see also
 2 Cato v. United States, 70 F.3d 1103, 1106 (9th Cir. 1995).

3 After careful review and consideration of the Complaint under the relevant standards
 4 and for the reasons discussed below, the Court finds that plaintiff has failed to state a claim
 5 on which relief may be granted and **ORDERS** the Complaint **DISMISSED WITH LEAVE TO**
 6 **AMEND.**

7 **PLAINTIFF'S ALLEGATIONS**

8 Plaintiff alleges that he was on parole at the times relevant to the Complaint.
 9 (Complaint, ¶ 3.) On March 19, 2009, he was at his place of business when two juvenile
 10 males, Alfred R. and Hayward D., entered and asked for employment applications. (Id., ¶
 11 10.) After filling out the applications, the two juveniles left. (Id., ¶ 13-14.) Forty-five minutes
 12 later, they returned, robbed plaintiff, and sexually assaulted him. (Id., ¶¶ 15-31.) Alfred R.
 13 and Hayward D. then took plaintiff by force to an ATM machine and attempted to force him
 14 to withdraw money. (Id., ¶¶ 32-43.) When they were unsuccessful, they forced plaintiff into
 15 the bank to withdraw money. (Id., ¶¶ 44-55.) Plaintiff alerted a bank employee to his
 16 predicament, and the bank employee called the police. (Id., ¶¶ 56-60.) The police arrived
 17 and arrested plaintiff, Alfred R., and Hayward D. (Id., ¶¶ 61-63.) Outside the bank, the
 18 police interviewed all three and found evidence that would corroborate plaintiff's story. (Id.,
 19 ¶¶ 63-65.) Police transported plaintiff, Alfred R., and Hayward D. to the police station. (Id.,
 20 ¶ 66.) At some point, the police learned that plaintiff was on parole. (Id., ¶ 67.) At the
 21 police station, police found ATM receipts and torn employment applications that would
 22 corroborate plaintiff's story. (Id., ¶¶ 68-69.) Plaintiff, Alfred R., and Hayward D. were
 23 interviewed separately. (Id., ¶¶ 70-71.) Following the interviews, plaintiff was told that the
 24 officers did not believe him and that he was being booked for oral sex on a minor, based on
 25 statements made by Alfred R. and/or Hayward D. (Id., ¶¶ 68-75, 78-79.) Plaintiff was taken
 26 to UCLA Medical Center and given a sexual assault examination. (Id., ¶ 76.) Alfred R. and
 27 Hayward D. were released from custody. (Id., ¶ 81.) Plaintiff was booked on charges of
 28

1 oral sex with a minor under Cal. Penal Code § 288(a)(b)(1). (Id., ¶ 82.) Plaintiff was placed
2 in the section of Los Angeles County jail for sex offenders. (Id., ¶¶ 82-83.)

3 While he was incarcerated, police searched plaintiff's business without a warrant.
4 (Complaint, ¶¶ 80, 86-87, 106.) As a result of the police's actions, plaintiff was slandered,
5 was forced to close his various businesses, was evicted from his residence, and is in deep
6 debt. (Id., ¶¶ 88-93.)

7 On April 20, 2009, plaintiff appeared at a parole revocation hearing on the charge of
8 lewd or lascivious acts upon a minor in violation of Cal. Penal Code § 288. (Id., ¶¶ 97-98.)
9 It appears that plaintiff was found guilty as charged. (Id., ¶ 103.) At the hearing, Officer
10 Craig testified that it was his opinion that plaintiff had concocted the story of the robbery.
11 (Id., ¶¶ 100-101.) Officer Craig "did everything within his power at said hearing including
12 manufacture and fabrication of the evidence to convict the plaintiff at said hearing." (Id., ¶
13 103.)

14 Plaintiff names as defendants the City of Los Angeles (the "City"), the Los Angeles
15 Police Department ("LAPD"), Police Chief William J. Bratton, Officer Craig, Officer Mendoez,
16 Officer Brower, Officer Vinton, and John Does 1 through 5. He sues all of the individual
17 defendants in both their official and individual capacities.

18 Although his claims are difficult to decipher, plaintiff appears to allege: (1) police
19 officers failed to investigate plaintiff's allegations of sexual assault and robbery against Alfred
20 R. and Hayward D. in violation of plaintiff's Fifth and Fourteenth Amendment rights to due
21 process and equal protection (Complaint ¶¶ 95, 96, 105); (2) police officers illegally
22 searched plaintiff's business in violation of the Fourth Amendment (Complaint, ¶ 106); and
23 (3) Officer Craig manufactured and fabricated evidence at plaintiff's parole revocation
24 hearing in order to ensure a conviction in violation of Plaintiff's Fifth and Fourteenth
25 Amendment rights to due process and equal protection (Complaint, ¶¶ 100-104);

26 Plaintiff seeks injunctive relief and compensatory and punitive damages.
27
28

DISCUSSION

Having reviewed the Complaint pursuant to the standards set forth above, the Court has determined that plaintiff's claims do not withstand screening for the following reasons:

I. Plaintiff Has Failed to Comply With Federal Rule of Civil Procedure 8

Federal Rule of Civil Procedure 8(a) states:

A pleading which sets forth a claim for relief . . . shall contain (1) a short and plain statement of the grounds upon which the court's jurisdiction depends, unless the court already has jurisdiction and the claim needs no new grounds of jurisdiction to support it, (2) a short and plain statement of the claim showing that the pleader is entitled to relief, and (3) a demand for judgment for the relief the pleader seeks.

Id. "Rule 8(a)'s simplified pleading standard applies to all civil actions, with limited exceptions." Swierkiewicz v. Sorema, 534 U.S. 506, 513 (2002). "Each averment of a pleading shall be simple, concise, and direct." Fed. R. Civ. P. 8(e).

Although the Court must construe a pro se plaintiff's complaint liberally, plaintiff nonetheless must allege a minimum factual and legal basis for each claim that is sufficient to give each defendant fair notice of what plaintiff's claims are and the grounds upon which they rest. Brazil v. United States Department of the Navy, 66 F.3d 193, 199 (9th Cir. 1995). Moreover, failure to comply with Rule 8 constitutes an independent basis for dismissal of a complaint that applies even if the claims in a complaint are not found to be wholly without merit. See McHenry v. Renne, 84 F.3d 1172, 1179 (9th Cir. 1996); see also Nevijel v. Northcoast Life Ins. Co., 651 F.2d 671, 673-74 (9th Cir. 1981).

Here, the Complaint does not contain a short and plain statement of plaintiff's claims sufficient to provide each defendant with notice of their allegedly wrongful acts. See, e.g., Brazil, 66 F.3d at 199. Plaintiff has not clearly identified the particular affirmative acts or omissions perpetrated by each individual defendant that caused the deprivation of rights of which plaintiff complains. As stated presently, many of the allegations in the Complaint are vague, conclusory, and lack sufficient particularity to put each individual on notice of the claims against him.

II. Plaintiff Has Failed to State a Monell Claim Against the City, LAPD, or Any of the Defendants in Their Official Capacities.

Plaintiff names the City, LAPD, Chief Bratton, and various police officers as defendants. He sues Chief Bratton and the officers in their individual and official capacities. Plaintiff has failed to state a claim against any of the individual defendants in their official capacities. The Supreme Court has held that an "official-capacity suit is, in all respects other than name, to be treated as a suit against the entity." Kentucky v. Graham, 473 U.S. 159, 166 (1985); see also Brandon v. Holt, 469 U.S. 464, 471-72 (1985); Larez v. City of Los Angeles, 946 F.2d 630, 646 (9th Cir. 1991). Such a suit "is not a suit against the official personally, for the real party in interest is the entity." Graham, 473 U.S. at 159.

Furthermore, the Supreme Court has held that a local government entity such as the City or LAPD "may not be sued under § 1983 for an injury inflicted solely by its employees or agents. Instead, it is only when execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury that the government as an entity is responsible under § 1983." Monell v. New York City Dep't. of Social Services, 436 U.S. 658, 694 (1978). Neither the City nor LAPD can be held liable for the alleged actions of its officers unless "the action that is alleged to be unconstitutional implements or executes a policy statement, ordinance, regulation, or decision officially adopted or promulgated by that body's officers," or if the alleged constitutional deprivation was "visited pursuant to a governmental 'custom' even though such a custom has not received formal approval through the body's official decision-making channels." Monell, 436 U.S. at 690-91; see also Redman v. County of San Diego, 942 F.2d 1435, 1443-44 (9th Cir. 1991).

Here, plaintiff has failed to identify any policy statements, regulations, officially adopted or promulgated decisions, customs, or practices by which any defendant allegedly inflicted the injuries about which plaintiff is complaining. The Court, therefore, finds that the allegations of the Complaint are insufficient to state a claim upon which relief may be granted against the City, LAPD, or any individual defendant in his official capacity.

III. Plaintiff Has Failed to State a Claim Against Defendant Bratton in His Individual Capacity.

To state a claim against a particular individual defendant for violation of his civil rights under 42 U.S.C. § 1983, plaintiff must allege that the defendant, acting under color of state law, deprived plaintiff of a right guaranteed under the Constitution or a federal statute. Karim-Panahi, 839 F.2d at 624. "A person deprives another 'of a constitutional right, within the meaning of section 1983, if he does an affirmative act, participates in another's affirmative acts, or omits to perform an act which he is legally required to do that causes the deprivation of which [the plaintiff complains].'" Leer v. Murphy, 844 F.2d 628, 633 (9th Cir. 1988), quoting Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978).

Thus, supervisory personnel generally are not liable under § 1983 on any theory of respondeat superior or vicarious liability in the absence of a state law imposing such liability. Redman v. County of San Diego, 942 F.2d 1435, 1446 (9th Cir. 1991); Hansen v. Black, 885 F.2d 642, 645- 46 (9th Cir. 1989). A supervisory official may be liable under § 1983 only if the official was personally involved in the constitutional deprivation, or if there was a sufficient causal connection between the supervisor's wrongful conduct and the constitutional violation. Redman, 942 F.2d at 1446-47; Hansen, 885 F.2d at 646; see also Ybarra v. Reno Thunderbird Mobile Home Village, 723 F.2d 675, 680 (9th Cir. 1984).

Here, plaintiff alleges that Police Chief William J. Bratton "is responsible for the administration and every day operation of the los Angeles police department including the conduct of the officers and the hiring and the firing and administration of a policy and procedures of the Los Angeles police department." (Complaint at 2.) A federal civil rights claim may not be based on a defendant's supervisory position. Plaintiff fails to allege that Chief Bratton did an affirmative act, participated in another's affirmative act, or failed to perform an act that he was legally required to do that caused the deprivations of which plaintiff complains. Therefore, the allegations of the Complaint are insufficient to state a federal civil rights claim against Chief Bratton in his individual capacity.

IV. Plaintiff Has Failed to State a Due Process or Equal Protection Claim Based On the Officers' Failure to Investigate the Sexual Assault and Robbery

Plaintiff alleges that "[t]he failure of the defendants to hold [Alfred R. and Hayward D.] responsible and to investigate [their] outrageous crime against the plaintiff" violated plaintiff's rights to due process and equal protection. (Complaint, ¶ 105; see also id., ¶ 95.) Plaintiff alleges that this refusal to investigate resulted in plaintiff being defamed, wrongfully arrested, convicted, and incarcerated, and losing his business and home. (Complaint, ¶¶ 88-96.) He appears to allege that the officers failed to investigate the alleged crimes against him because he was on parole. (See Complaint, ¶¶ 67, 96.)

"The Due Process Clause of the Fourteenth Amendment provides that '[n]o State ... shall deprive any person of life, liberty or property, without due process of law.'" DeShaney v. Winnebago County Dept. Of Social Services, 489 U.S. 189, 194 (1989). However, nothing in the language of the Due Process Clause "requires the State to protect the life, liberty and property of its citizens against invasion by private actors." Id. at 195. Therefore, state officials have no constitutional duty to protect the public from crime absent a special relationship between the state official and a particular member of the public, which only arises when the State restrains an individual's freedom to act on its own behalf. See id. at 200; see also Balistreri, 901 F.2d at 699-700. Moreover, police officers do not have an affirmative duty to investigate crimes in a particular manner or to protect one citizen from another. See Gini v. Las Vegas Metro. Police Dept., 40 F.3d 1041, 1045 (9th Cir. 1994).

Here, the officers investigated the incident by interviewing plaintiff, Alfred R., and Hayward D. The officers gathered evidence, including documents from Alfred R., and Hayward D. and evidence from plaintiff's business. Plaintiff told police that Alfred R. and Hayward D. had assaulted and robbed him. It appears that Alfred R. and Hayward D. told a different story. Ultimately, plaintiff had a parole revocation hearing on charges of lewd and lascivious acts upon a minor. He appears to have been found guilty. Officer Wright testified at the parole revocation hearing that he did not believe plaintiff's version of events. Officer

1 Vinton also told plaintiff on the day of the incident that he did not believe plaintiff's version of
2 events.

3 The officers had no affirmative duty to investigate the situation in the manner plaintiff
4 demanded. Moreover, an inadequate investigation by police officers is not sufficient to state
5 a § 1983 claim unless another recognized constitutional right is involved, such as failure to
6 protect against discrimination. See Gomez v. Whitney, 757 F.2d 1005, 1006 (9th Cir.1985).
7 Accordingly, even if the officers conducted an inadequate investigation, plaintiff cannot
8 sustain a § 1983 claim against the officers for failure to investigate plaintiff's claims against
9 Alfred B. and Hayward D.

10 **V. Plaintiff Has Failed to State a Claim for Violation of His Fourth Amendment**
11 **Rights**

12 Plaintiff claims that the officers' search of his business violated the Fourth
13 Amendment because they did not have a warrant. However, plaintiff was on parole at the
14 time of the search, and the officers did not need a warrant or permission to search plaintiff's
15 business. California law requires:

16 Any inmate who is eligible for release on parole pursuant to this chapter shall agree
17 in writing to be subject to search or seizure by a parole officer or other peace officer
18 at any time of the day or night, with or without a search warrant and with or without
19 cause.

20 Cal. Penal Code § 3067. This statute was upheld by the Supreme Court in Samson v.
21 California, 547 U.S. 843, 857 (2006), which found that a suspicionless search of a parolee,
22 conducted under the authority of § 3067, does not violate the Fourth Amendment. Id.; see
23 also U.S. v. Dixon, 217 Fed. Appx. 712 (9th Cir. 2007). Under California law, a
24 suspicionless search of a parolee is lawful "as long as it is not arbitrary, capricious or
25 harassing." People v. Reyes, 19 Cal.4th 743, 752 (1998) (cited in Samson, 547 U.S. at
26 847).

27 The facts stated by plaintiff indicate that the search of his business was not
28 "suspicionless." Rather, it was based on the officers' investigation, including the statements

1 of Alfred B. and Hayward D. Even if the search was suspicionless, plaintiff has not alleged
 2 any facts that would show that it was arbitrary, capricious or harassing. Moreover, even if
 3 plaintiff can demonstrate that the search was unlawful, he also must show that it caused him
 4 actual, compensable injury separate from the injury of his parole revocation. See Memphis
 5 Community School Dist. v. Stachura, 477 U.S. 299, 308 (1986); see also Heck v.
 6 Humphrey, 512 U.S. 477, 487 n.7 (1994).

7 Accordingly, the Fourth Amendment claim is dismissed. Although it does not appear
 8 that plaintiff can articulate any set of facts consistent with the facts already pled in the
 9 Complaint that would state a Fourth Amendment claim, the Court will allow plaintiff leave to
 10 amend.

11 **VI. Plaintiff Has Failed to State a Due Process or Equal Protection Claim Based On**
 12 **Officer Craig Manufacturing and Fabricating Evidence at the Parole Revocation**
 13 **Hearing**

14 Plaintiff alleges that Officer Craig manufactured and fabricated evidence at his parole
 15 revocation hearing in order to ensure a conviction. (Complaint, ¶ 103.)

16 To the extent that plaintiff is attempting to state a civil rights claim based on malicious
 17 prosecution, he has failed to do so. “In order to prevail on a § 1983 claim of malicious
 18 prosecution, a plaintiff ‘must show that the defendants prosecuted [him] with malice and
 19 without probable cause, and that they did so for the purpose of denying [him] equal
 20 protection or another specific constitutional right.’” Awabdy v. City of Adelanto, 368 F.3d
 21 1062, 1066 (9th Cir. 2004) (quoting Freeman v. City of Santa Ana, 68 F.3d 1180, 1189 (9th
 22 Cir. 1995)). “Malicious prosecution actions are not limited to suits against prosecutors but
 23 may be brought . . . against other persons who have wrongfully caused the charges to be
 24 filed.” Awabdy, 368 F.3d at 1066 (citations omitted). “An individual seeking to bring a
 25 malicious prosecution claim must generally establish that the prior proceedings terminated
 26 in such a manner as to indicate his innocence.” Id. at 1068.

27 Here, plaintiff has not made any factual allegations to establish that any prior
 28 proceeding terminated in a manner to indicate his innocence. Rather, it appears that he

1 was convicted of the parole violation. Accordingly, he fails to state a § 1983 claim of
2 malicious prosecution.

3 Plaintiff's claim against Officer Craig also appears to be barred by Heck v. Humphrey,
4 512 U.S. 477 (1994), in which the Supreme Court held that, "in order to recover damages
5 for allegedly unconstitutional conviction . . . or for other harm caused by actions whose
6 unlawfulness would render a conviction or sentence invalid, a § 1983 plaintiff must prove
7 that the conviction" has been reversed, expunged, invalidated, or called into question by the
8 granting of a habeas petition. Id. at 486-87. If "a judgment in favor of the plaintiff would
9 necessarily imply the invalidity of his conviction," the claim must be dismissed "unless the
10 plaintiff can demonstrate that the conviction [] has been invalidated." Id. at 487. Here, it
11 appears that a successful showing that Officer Craig fabricated evidence and gave false
12 testimony in order to convict plaintiff would necessarily imply the invalidity of plaintiff's
13 conviction of a parole violation. Accordingly, plaintiff's claim is barred by Heck and must be
14 dismissed.

15 As with his other claims, plaintiff will be given leave to amend and, to the extent that
16 he is able, cure this deficiency. If plaintiff chooses to amend this claim, he must articulate
17 sufficient facts to demonstrate the particular evidence he claims Officer Craig fabricated and
18 how granting his claim would not necessarily imply the invalidity of his conviction of a parole
19 violation.

20 * * * * *

21 For the reasons set forth herein, the Complaint is **DISMISSED WITH LEAVE TO**
22 **AMEND.**

23 If plaintiff desires to pursue this action, he is **ORDERED** to file a First Amended
24 Complaint within **thirty (30) days** of the date of this Order, which remedies the deficiencies
25 discussed above. Defendant must name separately each individual defendant against
26 whom he brings his claims, identify clearly the basis for each of his claims, and articulate the
27 connection between each named defendant and each claim.

1 If plaintiff chooses to file a First Amended Complaint, it should: (1) bear the docket
2 number assigned in this case; (2) be labeled "First Amended Complaint"; (3); be filled out
3 exactly in accordance with the directions on the form; and (4) be complete in and of itself
4 without reference to the previous complaints or any other pleading, attachment or
5 document. The Clerk is directed to provide plaintiff with a blank Central District of California
6 civil rights complaint form, which plaintiff must fill out completely and resubmit. Plaintiff must
7 write legibly.

8 **Plaintiff is admonished that, if he fails to file a First Amended Complaint by the**
9 **deadline set herein, the Court will recommend that this action be dismissed on the**
10 **grounds set forth above for failure to prosecute and for failure to comply with a Court**
11 **order.**

12
13 DATED: March 8, 2010

/s/ John E. McDermott
JOHN E. MCDERMOTT
UNITED STATES MAGISTRATE JUDGE